

REMARKS

By this Amendment, claims 1, 38, 40 and 41 have been amended, claims 2-37 and 39 have been canceled, and claims 42-46 have been added. Accordingly, claims 1, 38, and 40-46 are presented for examination. No new matter has been added.

Entry of the above amendments is respectfully requested. The instantly amended claims have not yet been considered by either the Examiner or the Board. Accordingly, res judicata is not applicable to the instant claims.

Amended claim 1 recites that the shell of the composite particle contains a metal pyrithione formed by reaction of pyrithione acid or a water-soluble compound of the core. Support for the term pyrithione acid is supported by the sentence bridging pages 9 and 10 of the instant specification. This reaction product language is supported by the disclosure regarding transchelation reaction product provided in the paragraph bridging pages 9 and 10 of the instant specification. The phrase "water-soluble salt of pyrithione" is supported by the disclosure provided by the paragraph bridging pages 10 and 11 of the instant specification.

The amendment to claim 38 with respect to the core of the composite particle is supported by page 5, lines 11 through 17 of the instant specification. The reaction product language is supported by the disclosure regarding transchelation reaction product provided in the paragraph bridging pages 9 and 10 of the instant specification.

The amendment to claims 40 and 41 with respect to reaction product language is supported by the disclosure regarding transchelation reaction product provided in the paragraph bridging pages 9 and 10 of the instant specification.

New claim 42 is analogous to amended claim 1 and additionally contains a range of component ratios as supported by page 10, lines 23-27 of the instant specification.

Claims 43-45 recite a Markush group of specific water-soluble pyrithione salts, and combinations, as supported by the disclosure provided at page 10, lines 5-9 of the instant specification.

Claim 46 is analogous to amended claim 41, and depends from claim 42.

In the Board of Appeals' Decision mailed on December 17, 2001 in the parent application, the Examiner's rejections of the claims over Bernstein, Oppong and Roenigk were reversed, and the rejections based on the Nagata and Fujita were vacated.

The sole claim rejection maintained by the Board of Appeals was that based on Morris (Rejection 6). The claims stand rejected under 35 USC 102(e) as allegedly anticipated by Morris, U.S. Patent 5,916,947. Morris describes in claim 1 of that patent the surface coating of zinc oxide with a photosensitizer. Zinc pyrithione is recited in claim 1 of the patent as a photosensitizer. However, the zinc pyrithione is not a water-soluble salt of pyrithione as recited in the instant claims. Further, zinc oxide won't react with zinc pyrithione since they share a common ion, namely zinc, and there is thus no motive force for a transchelation reaction between these compounds.

In contrast, the instant claims require the shell of the composite particle contains a metal pyrithione formed by reacting pyrithione acid or a water-soluble pyrithione salt with a portion of the metal or metal-containing compound of the core. This aspect of the presently claimed invention is neither disclosed nor suggested by the Morris patent.

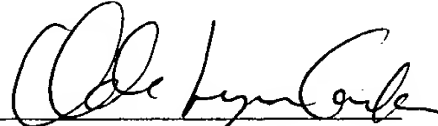
As noted above, Morris focuses upon photosensitizers that are water-insoluble materials, not water-soluble ones. See column 6, lines 9-15 and claim 1 of Morris. At column 6, lines 11-15, Morris discloses either subliming or solvent depositing the photosensitizer over the surfaces of colloidal zinc oxide. Such depositing step is not suggestive of the presently claimed composite particles that are chemically bound together at the interface of the shell and the core, as instantly claimed. Moreover, as noted above, the common zinc ion present in Morris' zinc oxide component and zinc pyrithione photosensitizer component teaches away from composite particles that are chemically bound together as instantly claimed.

Accordingly, the outstanding rejection under 35 USC 102(e) is untenable and should be withdrawn. Reconsideration of the claims in their amended form and an early receipt of a Notice of Allowance thereof are respectfully requested.

If the Examiner has any questions or believes that a discussion with Applicant's attorney would expedite prosecution, the Examiner is invited and encouraged to contact the undersigned at the telephone number below.

Please apply any credits or charge any deficiencies to our Deposit Account No. 23-1665.

Respectfully submitted,
David F. Gavin et al.

A handwritten signature in black ink, appearing to read "Dale Lynn Carlson", written over a horizontal line.

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